

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

MICHAEL J. LINDELL and
MYPILLOW, INC.,

Plaintiffs-Appellants,

v.

UNITED STATES OF AMERICA, *et al.*,
Defendants-Appellees.

No. 22-3510

**MOTION FOR A 30-DAY EXTENSION OF TIME
TO FILE THE GOVERNMENT’S RESPONSE BRIEF**

Defendants-appellees the United States of America, the United States Attorney General, the United States Attorney for the District of Minnesota, and the Director of the Federal Bureau of Investigation (collectively, “the government”), by and through undersigned counsel, respectfully move for a 30-day extension of time, to and including **March 29, 2023**, in which to file their response brief. Appellants oppose this motion.

1. On September 13, 2022, federal law-enforcement officers seized plaintiff-appellant Michael Lindell’s cell phone while executing a warranted search. A week later, Lindell and his business, co-plaintiff-appellant MyPillow, Inc., filed a complaint in the District of Minnesota alleging violations of the First, Fourth, and Fifth Amendments. *See generally* R. Doc. 1. Lindell and MyPillow thereafter sought access to application materials underlying the search warrant and moved for a preliminary injunction that would require the government to return Lindell’s cell phone and prohibit it from using

any information retrieved from the phone. *See* R. Docs. 9, 36, 54. In November, the district court (Tostrud, J.) denied Lindell's motions. R. Doc. 68, at 36.

2. Lindell and MyPillow appealed the district court's order. *See* R. Doc. 76. On December 5, 2022, this Court issued a briefing schedule setting a filing deadline of January 24, 2023, for appellants' opening brief. Appellants submitted a deficient opening brief on January 24 and a corrected version the following day. This Court issued a notice filing appellants' corrected opening brief on January 25 and setting a response-brief deadline of February 27.

3. A 30-day extension is necessary to allow adequate time to prepare the government's response brief in light of the complexity of this matter and other pressing deadlines faced by undersigned counsel. Undersigned counsel was not involved in the district-court proceedings in this case and requires additional time to familiarize himself with the record, develop the government's appellate arguments, and coordinate with other components of the Department of Justice with an interest in this litigation. While this matter is a priority, undersigned counsel has also been responsible for, *inter alia*, filing the government's response brief in *United States v. Gatlin*, No. 22-4315 (4th Cir.), on February 3; preparing for oral argument in *United States v. Duggar*, No. 22-2178 (8th Cir.), to be held February 16; and drafting the government's brief in opposition to certiorari in *Malagerio v. United States*, No. 22-6575 (S. Ct.), to be filed February 21.

4. On February 3, undersigned counsel contacted Patrick McSweeney, counsel of record for Lindell and MyPillow, to ascertain appellants' position on this

motion. On February 8, appellants' counsel stated that Lindell and MyPillow oppose the government's extension request.

For the foregoing reasons, the government respectfully moves for a 30-day extension of time, to and including **March 29, 2023**, in which to file its brief.

Respectfully submitted,

s/Joshua K. Handell

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February 8, 2023

CERTIFICATION OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d) because it has been prepared in 14-point Garamond, a proportionally spaced font, and contains 458 countable words, as verified by the word-count feature of Microsoft Word.

s/Joshua K. Handell

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CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2023, I electronically filed the foregoing motion with the Clerk of the Court via the appellate CM/ECF system. The participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

s/Joshua K. Handell

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